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FILED
Clerk
District Court

MAY 30 2008

For The Northern Mariana Islands
By _____
(Deputy Clerk)

Attorneys for Plaintiff John K. Baldwin

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN MARIANA ISLANDS

JOHN K. BALDWIN,

Plaintiff,

vs.

UNITED STATES OF AMERICA,

Defendant.

CV 08 0024

CIVIL ACTION NO. _____

**PLAINTIFF'S ORIGINAL COMPLAINT
AND APPLICATION FOR INJUNCTIVE RELIEF**

1. This action arises, and the Court has jurisdiction, pursuant to 28 U.S.C. § 1340 and under the general equity jurisdiction of the Federal District Courts.

2. The illegality of the tax sought to be enjoined, and the circumstances of this action, which appear more fully herein, constitute such special, extraordinary and exceptional circumstances as to qualify as an exception to Section 7421(a) of the Internal Revenue Code of 1954.

PARTIES

3. Plaintiff John K. Baldwin ("Baldwin") is an individual and United States citizen, residing within the United States District for the Commonwealth of Northern Marianas Islands.

1 4. Defendant is the United States of America ("Defendant").

2 5. In this action, Defendant may be served by hand delivering a copy of this Complaint to
3 Craig Moore, United States Attorney's Office for the District of the Northern Mariana Islands,
4 Horiguchi Building, Garapan, Saipan MP 96950; and mailing two (2) copies of this Complaint
5 by certified mail, return receipt requested, to the Honorable Michael Mukasey, Attorney General
6 of the United States, (Attention: Rick Ward, Tax Division), 10th and Pennsylvania Avenue, NW,
7 Washington, D.C. 20530; and to Rosalee Hofman (#59-00862), Internal Revenue Service, 850
8 Trafalgar Court, Suite 200, Stop 4366, Maitland, Florida 32751.

10 **UNDERLYING FACTS**

11 6. In 2002, Baldwin was a 99.9999% shareholder of Sunset Management, L.L.C.
12 ("Sunset"), a partner of Fulham, L.L.C. ("Fulham"). True and correct copies of the Form 1065
13 for Sunset and Fulham will be attached to as Exhibits 3 and 4, respectively, to the May 28, 2008
14 Affidavit of David Jensen in Support of Plaintiff's Emergency Motion for Temporary
15 Restraining Order, which Plaintiff expects to submit to Defendant and to the Court with a motion
16 to file under seal on May 30, 2008 ("Jensen Aff.).

17 7. Defendant made an income tax assessment against Baldwin in the amount of \$5,131,076
18 for tax year 2002. A true and correct copy of the Notice of Deficiency will be attached to as
19 Exhibit 1 to the Jensen Aff. Included in the adjustment to Baldwin's income for 2002, was the
20 disallowance of a loss of \$5,603,892 from Sunset. (Exhibit 1 to Jensen Aff.). This loss from
21 Sunset was claimed by Baldwin as a pass-through loss originating from Fulham. (Exhibit 4 to
22 Jensen Aff.).

1 8. Fulham is a partnership regulated by the Tax Equity and Fiscal Responsibility Act of
2 1982 ("TEFRA") and, therefore, its tax treatment is determined at the partnership level pursuant
3 to I.R.C. § 6221 and is subject to the provisions of I.R.C. §§ 6221 through 6234. Fulham is
4 currently the subject of a TEFRA investigation through Defendant's Maitland, Florida Internal
5 Revenue Service office.

6
7 9. Under I.R.C. § 6225(a), Defendant lacks legal authority to assess a deficiency against
8 Baldwin that is attributable to Fulham until the completion of the TEFRA proceeding. As such,
9 the assessment against Baldwin, as it relates to the disallowance of the loss of \$5,603,892
10 originating from Fulham and passing through to Baldwin via Sunset, was void at its inception.

11 10. This is thus a situation in which under no circumstances could the government prevail on
12 the issue and thus the purported assessment is merely an extraction in the guise of a tax.

13
14 11. Baldwin has attempted to resolve the matter administratively, and while Defendant has
15 admitted the assessment is premature and wholly illegal, the revenue agent assigned to the case,
16 the collection service center and the Taxpayer Advocate all say they are either unwilling and/or
17 without power to correct the situation.

18 12. Notwithstanding, Defendant has expressed its intention to levy on Baldwin's property to
19 satisfy the illegal and void assessment, totaling, with associated penalties, an amount in excess of
20 seven million dollars.

21
22 13. Baldwin has no adequate remedy at law and will suffer irreparable injury and will be
23 without an adequate remedy at law unless Defendant is enjoined both permanently and during
24
25 the pendency of this action from collecting the illegal portion of this tax, and, pending the
26 hearing on the preliminary injunction, is temporarily restrained from collection of this tax.
27

1 14. Baldwin is statutorily unable to immediately sue for a refund should he pay the illegal
2 portion of the assessment and the statute of limitations of any refund suit after the issuance of the
3 Final Partnership Administrative Adjustment ("FPAA") may lapse, causing imminent risk that
4 that Baldwin will be forced to pay additional taxes following the FPAA without opportunity to
5 obtain a refund of the current illegal assessment.
6

7 15. Baldwin is willing to pay the challenged but properly assessed portion of the 2002
8 assessment that relates to his personal return.

9 16. The injunctive relief herein prayed is not precluded by 26 U.S.C. § 7421(a) because the
10 assessment is illegal and void and enforcement of the tax against Baldwin would cause
11 irreparable harm for which he has no adequate remedy at law. Moreover, an invalid TEFRA
12 assessment, such as the one present in this case, is specifically excepted from 26 U.S.C. §
13 7421(a).
14

15 **WHEREFORE, PREMISES CONSIDERED,** Plaintiff prays for the judgment as
16 follows:

17 1. That the assessment against Baldwin, as it relates to the partnership loss of
18 \$5,603,892, as described herein, be adjudged illegal and invalid;

19 2. That Defendant be enjoined, both permanently and during the pendency of this
20 action, and pending the hearing on the preliminary injunction, temporarily restrained, from
21 collecting or attempting to collect from Plaintiff, any tax, interest or penalties purportedly sought
22 to be assessed as a result of the partnership loss, as described herein;
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1 3. That defendant be enjoined from perfecting or attempting to perfect, any tax lien
2 arising from the assessment against Baldwin, as it relates to the partnership loss of \$5,603,892.

3 4. That the Court to set his application for preliminary injunction for hearing at the
4 earliest possible time;

5 5. That the Court set his application for injunctive relief for a full trial on the issues
6 in this application and, after trial, issue a permanent injunction against Defendant; and
7

8 6. For cost and such further relief as is proper.
9

10 Respectfully submitted on this 30th day of
11 May, 2008.

12
13 By: 

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15 Gregory J. Koebel
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20 080530-COMPLAINT
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